

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ROBERT WHARTON,	:	CIVIL ACTION
<i>Petitioner,</i>	:	
	:	
	:	CAPITAL CASE
v.	:	
	:	
DONALD VAUGHN, et al.	:	NO. 01-6049
<i>Respondents.</i>		

MOTION TO HOLD § 2254 PETITION IN ABEYANCE

The Commonwealth respectfully requests this Court to hold Defendant Robert Wharton's Petition for a Writ of Habeas Corpus in abeyance. In support thereof, the Commonwealth respectfully represents:

1. The Pennsylvania Supreme Court is currently considering the case of Commonwealth v. Cox, 102 EM 2018.
2. The issue presented in Cox is whether the death penalty, as applied, violates the Pennsylvania Constitution's ban on cruel punishments. The Court has directed the parties to "brief the issue of the propriety of this Court's exercise of either King's Bench or extraordinary jurisdiction, as well as the merits of the issues raised in the petition." Order, 12/3/18.
3. One potential outcome of this litigation would be a determination that the death penalty, as it has been applied, violates the Pennsylvania Constitution.
4. In Wharton, the only remaining question before this Court pertains to trial counsel's representation at Wharton's death penalty hearing.
5. Because the only remaining question in Wharton pertains to the

validity of his death sentence, the decision in Cox may render this question moot.

6. Under Rhines v. Weber, 544 U.S. 269 (2005), a federal court may grant a stay and hold a habeas corpus application containing at least one unexhausted claim in abeyance. *Id.* at 277.

WHEREFORE, the Commonwealth respectfully requests this Court to hold this matter in abeyance until the Pennsylvania Supreme Court determines whether, as applied, the death penalty violates the Pennsylvania Constitution's ban on cruel punishments.

Respectfully submitted,

/s/ Paul M. George
Paul M. George, ADA
Assistant Supervisor, Law Division

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CERTIFICATE OF SERVICE

I, Paul George, hereby certify that on August 26, 2019, a copy of this motion was served *via* this Court's ECF system.

/s/ Paul George
Paul George
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